

## HOUSE BILL NO. 348

INTRODUCED BY J. SHOCKLEY, BERRY, CLARK, COCCHIARELLA, FORRESTER, FUCHS, GILLAN,  
GOLIE, MATTHEWS, PRICE, ROUSH, SCHMIDT, SHEA, STORY, TROPILA, BOOKOUT-REINICKE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING STATE AGENCY LIQUOR  
STORES; INCREASING COMMISSION RATES FOR STATE AGENCY LIQUOR STORES BASED UPON THE  
ANNUAL SALES VOLUMES OF STORES; PROVIDING FOR RENEWALS AT TERMINATION OF THE  
10-YEAR PERIOD OF FRANCHISE AGREEMENTS; ~~CHANGING THE POPULATION LEVELS AND PROXIMITY~~  
~~TO OTHER STATE AGENCY LIQUOR STORES FOR ESTABLISHING NEW STATE AGENCY LIQUOR~~  
~~STORES~~; AMENDING SECTIONS SECTION 16-2-101 ~~AND 16-2-109~~, MCA; AND PROVIDING AN  
IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --  
kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate  
agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes,  
varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor  
stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the  
various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold  
liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor  
store may place a liquor order with the department at its state liquor warehouse in the manner to be  
established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency  
liquor store's commission rate ~~in the state agency franchise agreement~~ and less the agency liquor store's  
weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or

1 employee-operated state liquor stores that were operating on June 30, 1994, the weighted average  
2 discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's  
3 full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross  
4 sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as  
5 provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994.  
6 For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio  
7 is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted  
8 discount ratio must be computed on the store's first 12 months of operation.

9 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid  
10 for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

11 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

12 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with  
13 populations over 3,000.

14 (4) Agency liquor stores must receive commissions payable as follows:

15 (a) (i) a 10% commission for agencies in communities with less than 3,000 in population, unless  
16 adjusted pursuant to subsection (6) ~~or (8)~~; or

17 ~~(b)(ii)~~ (i) a commission established by competitive bidding unless adjusted pursuant to subsection (6)  
18 ~~or (8)~~ for agencies in communities with 3,000 or more in population; plus

19 (b) for agency liquor stores operating under a renewed franchise agreement or that have been  
20 operated for at least 3 years under an original franchise agreement, a percentage based upon the total  
21 annual dollar volume of sales in the previous fiscal year, as follows:

22 (i) 5.5% for the top 50% of agency liquor stores with the greatest A volume of sales of \$500,000  
23 OR MORE, 0.125% BEGINNING JULY 1, 2001, 2% 2002, 1% 0.5% BEGINNING JULY 1, 2003, AND 3.5% 1.75%  
24 0.875% BEGINNING JULY 1, 2005 2004; ~~or~~

25 (ii) 8.5% for the 50% of agency liquor stores with the lowest A volume of sales- OF LESS THAN  
26 \$500,000, 1.25% BEGINNING JULY 1, 2001, 4.5% 2002, 2.25% 1.25% BEGINNING JULY 1, 2003, AND 6.5%  
27 3.25% 1.5% BEGINNING JULY 1, 2005 2004; OR

28 (iii) FOR A CITY WITH MORE THAN ONE AGENCY LIQUOR STORE, IN LIEU OF THE ADDITION TO A COMMISSION  
29 INCREASE PROVIDED IN SUBSECTION (4)(B)(i) OR (4)(B)(ii), FOR EACH STORE IN THE CITY, AN ADDITION TO ITS COMMISSION  
30 RATE EQUAL TO THE INCREASE GRANTED THE STORE WITH THE LOWEST COMMISSION RATE.

(5) An agency franchise agreement must:

(a) be effective for a 10-year period and ~~may~~ must be renewed ~~every 10 years at the existing~~  
commission rate for additional 10-year periods if the requirements of the agency franchise agreement have  
been satisfactorily performed;

(b) require the agent to maintain comprehensive general liability insurance and liquor liability  
insurance throughout the term of the agency franchise agreement in an amount established by the  
department of administration. The insurance policy must:

(i) declare the department as an additional insured; and

(ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising  
from or in connection with the agent's negligent acts or activities in the execution and performance of the  
agency franchise agreement.

(c) provide that upon termination by the department for cause or upon mutual termination, the  
agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate  
time, the department may immediately repossess all liquor inventory, wherever located.

(d) specify the reasonable service and space requirements that the agent will provide throughout  
the term of the agency franchise agreement.

(6) (a) The commission percentage that the department pays the agent under ~~an agency franchise~~  
~~agreement~~ subsection (4)(a) may be reviewed on July 1, 1998, and every succeeding 3 years ~~thereafter~~  
at the request of either party. If the agent concurs, the department may adjust the commission percentage  
to be paid during the remaining term of the agency franchise agreement or until the next time the  
commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement,  
to a commission percentage that is equal to the average commission percentage being paid agents with  
similar sales volumes if:

(i) the agent's commission percentage is less than the average; and

(ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

(b) The adjusted commission percentage determined under subsection (6)(a) may be greater than  
the average commission paid agents with similar sales volume:

(i) if the agent demonstrates that:

(A) the agent has experienced cost increases that are beyond the agent's control, including but  
not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

(B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and

(ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified in the agent's franchise agreement that will eliminate the impact of cost increases.

(7) The liability insurance requirement may be reviewed every 3 years after July 1, 1995, at the request of either the agent or the department. If the agent concurs, the department may adjust the requirements to be effective during the remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks associated with the agent's negligent acts or activities in the execution and performance of the agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the department of administration.

~~(8) (a) Except as provided in subsection (8)(b), an agency franchise agreement must be renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the agency franchise agreement. Except for establishing the new term and except for a commission percentage that may be negotiated as provided in subsection (8)(b), changes in the agency franchise agreement as a result of a renewal may not be made unless the agent and the department mutually agree.~~

~~—— (b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the department determines that an adjustment of the commission percentage paid to the agent is in the best interests of the state, the department shall notify the agent of that determination.~~

~~—— (c) If the agent does not concur with the department's commission percentage adjustment, the department shall advertise for bids for the agency franchise at the adjusted commission percentage, subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter are received by the department for the agency franchise at the adjusted commission percentage, the agent under the existing franchise agreement has a preference right to renew the franchise agreement by concurring in the adjusted commission percentage.~~

~~—— (d) If the agent under the existing franchise agreement declines to exercise the preference right under subsection (8)(c), the department shall enter into an agency franchise agreement as provided in this chapter with a person who accepted the adjusted commission percentage.~~

~~—— (e) If the agent exercises the preference right and believes the adjusted commission percentage to be inadequate or not in the best interests of the state, the agent may request an administrative hearing. The request must contain a statement of reasons why the agent believes the commission percentage to~~

~~1 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if  
2 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate  
3 or not in the state's best interests. The department may, after the hearing, adjust the commission  
4 percentage if the agent shows that the commission percentage is inadequate or not in the best interests  
5 of the state. If the department increases the commission percentage rate, the department shall set forth  
6 its findings and conclusions in writing and inform the agent and the other persons who offered to enter  
7 into an agency agreement at the adjusted commission rate.~~

~~(9)~~(8) (a) The department may terminate an agency franchise agreement if the agent has not  
satisfactorily performed the requirements of the agency franchise agreement because the agent:

(i) charges retail prices that are less than the department's posted price for liquor, sells liquor to  
persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than  
the discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with  
demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability  
to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has  
operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the  
purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency  
franchise agreement for cause and specify the unmet requirements. The agent may contest the termination  
and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall  
suspend its termination order until after a final decision has been made pursuant to the Montana  
Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the  
department may terminate the agency franchise agreement and immediately repossess any liquor  
purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent  
may contest the termination and request a hearing within 30 days of the department's repossession of the  
liquor. The agency liquor store shall remain closed until a final decision has been reached following a

1 hearing held pursuant to the Montana Administrative Procedure Act.

2 ~~(10)~~(9) An agency franchise agreement may be terminated upon mutual agreement by the agent  
3 and the department.

4 ~~(11)~~(10) An agent may assign an agency franchise agreement to a person who, upon approval of  
5 the department, is named agent in the agency franchise agreement, with the rights, privileges, and  
6 responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent  
7 shall notify the department of an intent to assign the agency franchise agreement 60 days before the  
8 intended effective date of the assignment. The department may not unreasonably withhold approval of an  
9 assignment request.

10 ~~(12)~~(11) A person or entity may not hold an ownership interest in more than one agency liquor  
11 store.

12 ~~(13)~~(12) The department shall maintain sufficient inventory in the state warehouse in order to meet  
13 a monthly service level of at least 97%."

14

15 ~~Section 2. Section 16-2-109, MCA, is amended to read:~~

16 ~~"16-2-109. Number and location of agency liquor stores. (1) (a) In a community with a population~~  
17 ~~of 12,000 or less, there may be one agency liquor store. In communities with populations greater than~~  
18 ~~12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency~~  
19 ~~liquor store within increments of population of 40,000 60,000 inhabitants above 12,000 inhabitants. In~~  
20 ~~determining population, the department shall use the same methods used for determining increases in the~~  
21 ~~retail license quota system as provided in 16-4-501.~~

22 ~~(b) In communities that are eligible for more than one agency liquor store, an agency liquor store~~  
23 ~~established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store~~  
24 ~~in the community.~~

25 ~~(2) An agency liquor store established after April 25, 1995, may not be located in a community~~  
26 ~~that is closer than 35 60 miles to another community in which an agency liquor store is presently located,~~  
27 ~~except in the circumstance when the most recent population estimates show a 25% growth in population~~  
28 ~~or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population~~  
29 ~~increase is reasonably expected to continue for at least 5 years."~~

30

1        NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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3        NEW SECTION. **Section 3. Applicability.** [This act] applies to commissions beginning in calendar

4 year ~~2001~~ 2002.

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